

1
2
3
4
5
6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 RICKIE L. HILL,
11

12 Petitioner,
13

14 vs.
15

16 RENEE BAKER, *et al.*,
17

18 Respondents.
19

Case No. 3:14-cv-00680-RCJ-WGC

ORDER

20 This is a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner's
21 application to proceed *in forma pauperis* (ECF #1) is granted.

22 Petitioner has filed a motion to stay proceedings (ECF #3). He indicates that he has filed this
23 petition as a protective federal petition while his state-court postconviction proceedings conclude.

24 In *Rhines v. Weber*, 544 U.S. 269 (2005), the Supreme Court placed limitations upon the
25 discretion of the court to facilitate habeas petitioners' return to state court to exhaust claims. The
26 *Rhines* Court stated:

27 [S]tay and abeyance should be available only in limited circumstances.

28 Because granting a stay effectively excuses a petitioner's failure to
present his claims first to the state courts, stay and abeyance is only
appropriate when the district court determines there was good cause for

1 the petitioner's failure to exhaust his claims first in state court.
2 Moreover, even if a petitioner had good cause for that failure, the district
3 court would abuse its discretion if it were to grant him a stay when his
4 unexhausted claims are plainly meritless. *Cf.* 28 U.S.C. § 2254(b)(2)
5 ("An application for a writ of habeas corpus may be denied on the
6 merits, notwithstanding the failure of the applicant to exhaust the
7 remedies available in the courts of the State").

8 *Rhines*, 544 U.S. at 277. The Court went on to state that, "[I]t likely would be an abuse of discretion
9 for a district court to deny a stay and to dismiss a mixed petition if the petitioner had good cause for his
10 failure to exhaust, his unexhausted claims are potentially meritorious, and there is no indication that the
11 petitioner engaged in intentionally dilatory litigation tactics." *Id.* at 278. The Ninth Circuit has held
12 that the application of an "extraordinary circumstances" standard does not comport with the "good
13 cause" standard prescribed by *Rhines*. *Jackson v. Roe*, 425 F.3d 654, 661-62 (9th Cir. 2005). The Court
14 may stay a petition containing both exhausted and unexhausted claims if: (1) the habeas petitioner has
15 good cause; (2) the unexhausted claims are potentially meritorious; and (3) petitioner has not engaged
16 in dilatory litigation tactics. *Rhines*, 544 U.S. at 277; *see also Wooten v. Kirkland*, 540 F.3d 1019,
17 1023-24 (9th Cir. 2008).

18 In *Pace v. DiGuglielmo*, 544 U.S. 416, the United States Supreme Court indicated that a
19 petitioner facing the "predicament" that could occur if he is waiting for a final decision from the state
20 courts as to whether his petition was "properly filed" should file a "protective" federal petition and ask
21 the federal court for a stay and abeyance. In this regard, petitioner's *pro se* federal petition (ECF #1-1)
22 was appropriately filed as a protective petition. Petitioner has demonstrated good cause under *Rhines*
23 for the failure to exhaust all grounds of the federal petition prior to filing it. Specifically, the Nevada
24 Supreme Court remanded petitioner's state postconviction petition and directed the district court to
25 conduct an evidentiary hearing as to whether petitioner can demonstrate good cause to excuse his delay
26 in filing that state petition. *See Nevada Supreme Court Case No. 58154*. The appeal of the state district
27 court order denying the petition after remand is currently pending before the Nevada Supreme Court.
28 *See Nevada Supreme Court Case No. 66937*. Because the resolution of petitioner's pending state

1 postconviction habeas petition may have several effects on the instant case, a stay and abeyance of this
2 federal habeas corpus proceeding is appropriate. Further, the grounds of the federal petition that
3 petitioner seeks to exhaust in state court are not “plainly meritless” under the second prong of the
4 *Rhines* test. Finally, there is no indication that petitioner engaged in dilatory litigation tactics. This
5 court concludes that petitioner has satisfied the criteria for a stay and abeyance under *Rhines*.
6 Petitioner’s motion for a stay and abeyance of this federal habeas corpus proceeding is granted.

7 **IT IS THEREFORE ORDERED** that petitioner’s application to proceed *in forma pauperis*
8 (ECF #1) is **GRANTED**.

9 **IT IS FURTHER ORDERED** that the Clerk shall detach and file the petition (ECF #1-1).

10 **IT IS FURTHER ORDERED** that petitioner’s motion for stay (ECF #3) is **GRANTED**. This
11 action is **STAYED** pending the resolution of petitioner’s state post-conviction habeas petition.

12 **IT IS FURTHER ORDERED** that the grant of a stay is conditioned upon petitioner returning
13 to federal court with a motion to reopen the case within **forty-five (45) days** of the issuance of the
14 remittitur by the Supreme Court of Nevada at the conclusion of the state court proceedings on the post-
15 conviction habeas petition.

16 **IT IS FURTHER ORDERED** that the Clerk shall **ADMINISTRATIVELY CLOSE this**
17 **action, until such time as the court grants a motion to reopen the matter.**

18
19 DATED: This 11th day of February, 2015

20
21 
22 UNITED STATES DISTRICT JUDGE
23
24
25
26
27
28